

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE FLINT WATER CASES

No. 5:16-cv-10444-JEL-EAS
(consolidated)
Hon. Judith E. Levy

**DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH
AMERICA, INC., AND VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC’S
MOTION TO CORRECT A SCRIVENER’S ERROR**

Defendants Veolia North America, LLC, Veolia North America, Inc., and Veolia Water North America Operating Services, LLC (“VNA”) move this Court to correct a scrivener’s error in the Court’s recent opinion granting in part and denying in part Plaintiffs’ motion to certify a class. *See* ECF No. 1933. The Court stated that “VNA signed a contract” to provide consulting services to the City of Flint on February 4, 2015 and accordingly started “the time period for the Multi-Defendant Issues Class” on that date. *Id.* at PageID.67610. But as explained further in the attached brief, VNA and the other parties to the referenced contract signed it on February 10, 2015. The Court should therefore correct the class period. As Local Rule 7.1(a) requires, VNA sought concurrence with Plaintiffs’ counsel concerning this motion, but concurrence was not obtained

Respectfully submitted,

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Dated: August 19, 2021

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**DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH
AMERICA, INC., AND VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, LLC'S BRIEF IN SUPPORT OF THEIR
MOTION TO CORRECT A SCRIVENER'S ERROR**

STATEMENT OF THE ISSUE PRESENTED

Should the Court correct the start date for the multi-defendant issues class to reflect that VNA's consulting contract with the City of Flint was executed on February 10, 2015?

VNA answers: "Yes."

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Opinion and Order, *In re Flint Water Cases*, No. 16-10444 (E.D. Mich. Aug. 11, 2021), ECF No. 1933.

INTRODUCTION

The Court recently issued an opinion and order certifying two issues classes. As relevant to VNA, the Court certified a “Multi-Defendant Issues Class” comprising persons who, “for any period of time between *February 4, 2015* and October 16, 2015,” were “exposed” to Flint drinking water, owned real property in Flint, or owned or operated a business there. ECF No. 1933, PageID.67607 (emphasis added). The Court indicated that “the February 4, 2015 beginning date reflects the time by which both Defendants were unquestionably consulting on—and therefore potentially liable for—the Flint Water Crisis.” *Id.* at PageID.67610. February 4 was the key date because the Court believed that “VNA signed a contract” to provide consulting services to the City of Flint on that date. *Id.* at PageID.67610 n.16 (citing ECF No. 1208-73, PageID.35680); *see also id.* at PageID.67592 (“On February 4, 2015, VNA signed a contract with the City”); *id.* at PageID.67608 (“VNA did not begin its consulting relationship with the City until February 4, 2015.” (citing ECF No. 1208-73, PageID.35680)).¹

¹ VNA continues to maintain that it could not be deemed to be in breach of any duty or standard of care until it had reviewed enough information about Flint’s water and failed to act as a reasonable engineer would have acted in light of that information—which could not possibly have been as early as the date on which the contract was executed. VNA reserves the right to challenge, object, or appeal the class commencement date—or any other part of the Court’s opinion and order—based on any appropriate grounds.

The Court made an apparent scrivener's error in finding that the VNA consulting contract was signed on February 4, 2015. All parties to that contract signed it on February 10, 2015. In support of the February 4, 2015 date, the Court cited page three of the "City of Flint Contract with Veolia Water North America Operating Services, LLC." *See* ECF No. 1208-73, PageID.35680. That page says only that "[t]his contract shall be effective upon the date that it is executed by all parties and presented to the City of Flint Clerk." *Id.* Page eight of the same contract shows that "all parties" executed the contract on February 10, 2015:

IN WITNESS WHEREOF, the parties have executed this contract this (day) 10th of Dec
February, 2015.

See id. at PageID.35685. Thus, the earliest date that VNA could have "signed [the] contract" was February 10, 2015.

The February 4, 2015 date may have been mistakenly drawn from an emergency-manager resolution of that date. *Id.* at PageID.35676. The emergency-manager resolution only "authorized" city officials "to enter into a contract with [VNA] for water quality consulting." *Id.*; *see also id.* at PageID.35677 ("[T]he above mentioned vendor has been approved by the Emergency Manager on February 4, 2015. You may now enter a contract with Veolia Water"). The resolution did not implement the contract—that happened days later. Certainly, VNA itself did not

“sign” anything on February 4; only the emergency manager and certain city officials signed the February 4 resolution. *Id.* at PageID.35676.

The Court should therefore correct its opinion. To the extent that the contract signing date is relevant, that date is February 10, 2015.

Respectfully submitted,

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Veolia Water North America Operating Services, LLC*

Dated: August 19, 2021

CERTIFICATE OF SERVICE

I, Kristin M. Dupre, one of the counsel of record for VNA, certify that I served the within Motion on August 19, 2021, by causing it to be e-filed through the Court’s CM/ECF electronic filing system which will automatically deliver electronic copies of it to counsel of record for all parties to have appeared in In re Flint Water Cases.

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